

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 20, 2016

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 20, 2016.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the March 25, 2016 meeting will be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2016-21: LEX PROPERTIES, LLC** – requests two variances: 1) to reduce the side yard from 5 feet to 3.5 feet in order to construct a residence with available room for a driveway; and 2) to increase the maximum allowable parking in the Infill and Redevelopment Area from 3 spaces to 4 spaces in a Single Family Residential (R-1E) zone, at 153 Colfax St (Council District 3).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances will not adversely affect the subject or surrounding properties and will not cause any health, safety or welfare concerns. The resulting development will not be out of character with the immediately adjoining properties, which have already been developed in a similar manner.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance. The scope of the requested variances on this property, when reviewed in conjunction with the surrounding properties, is in character with the type of development immediately surrounding this lot.
- c. The built environment of the immediately adjoining properties, including the 4 immediately adjoining properties, (two to the east and two to the west) and a 250+ space UK parking lot, which create a unique circumstance that does not apply to most other similarly zoned properties.
- d. Strict application of the Zoning Ordinance would result in either a smaller/narrower residential home or the loss of rear parking, which is a desirable feature for this property. Furthermore, there will not be a material difference for this property, based on the surroundings, if one additional parking space is developed.
- e. This request is not a willful violation of the Zoning Ordinance. Site work has begun; but the final designs, and subsequent building permits for the development of this lot, are awaiting the decision of the Board concerning the requested variances.

This recommendation of approval is made subject to the following conditions:

1. That the property be developed as shown on the site plan submitted with this application.
 2. All applicable permits for construction shall be obtained from the Division of Building Inspection.
2. **V-2016-28: LORA BROWNING** – requests a variance to reduce the required side street yard from 30 feet to 12 feet in order to construct an in-ground lap pool in a Single Family Residential (R-1D) zone, at 4429 Hartland Parkway (Council District 8).

The Staff Recommends: **Approval** of a variance to 12 feet; for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties and will not cause any health, safety or welfare concerns. The applicant's side yard is completely enclosed with an existing fence, and the in-ground lap pool will likely not be visible from the street. Furthermore, because of the open space drainage lot to the rear of this property, the proposed pool will not be adjacent to any other residential property.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. Reducing the side street side yard setback will provide the necessary variance to construct a pool in the side yard, which functions similarly to a rear yard for this corner lot.
- c. The topography, trees, and existing deck on the other side yard, the minimal rear yard, and the adjacent open space lot to the rear of this lot, in combination, create a unique set of circumstances that make the side street side yard the logical location for the proposed in-ground lap pool.
- d. Strict application of the Zoning Ordinance would result in the removal of a large deck and trees, and would require unnecessary grading to install the pool in the other side yard; whereas the requested variance to the side street side yard is relatively minor in nature to accomplish the applicant's desire for a lap pool, which will be primarily utilized for physical therapy.
- e. This request is not a willful violation of the Zoning Ordinance. Construction has not begun and the applicant learned of the need for the variance during the normal permitting process.

This recommendation of approval is made subject to the following conditions:

3. That the pool be developed as shown on the site plan submitted with this application, allowing minor adjustments to be approved by Building Inspection during the normal permitting process, if necessary.
4. Any applicable permits shall be obtained from the Division of Building Inspection prior to construction.
5. That an Administrative Action Plat for Lancaster Woods, Unit 2, reflecting the Board's action for the subject property, be submitted to the Division of Planning, within 30 days.

D. Conditional Use Appeals

1. **CV-2016-26: SYNCHRONICITY DEVELOPMENT, LLC** – requests a conditional use permit to construct and operate a drive-through facility for a bank; and a variance to reduce the minimum front yard to 8 feet in a Downtown Frame Business (B-2A) zone, at 367-375 East Main Street & 107-111 Eastern Avenue (Council District 1).

The Staff Recommends: **Approval** of the drive-through, for the following reasons:

- a. A drive-through facility for a proposed bank at this location should not adversely affect the subject or surrounding properties. Adequate vehicular stacking space and access from Eastern Avenue will be provided in the parking structure.
- b. By placing the drive-through in the parking structure at the rear of the building, it will not have any visual impact that similar facilities would have on the surrounding downtown environment.
- c. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommends: **Approval** of the setback variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties and will not cause any health, safety or welfare concerns. The resulting development will not be out of character with the immediately adjoining properties, most of which have already been developed in a similar manner.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The scope of the requested variance on this property, when reviewed in conjunction with the surrounding properties, is in character with the type of development immediately surrounding this lot.
- c. The built environment and setback of the immediately adjoining properties create a unique circumstance that does not apply to most other similarly zoned properties.
- d. Strict application of the Zoning Ordinance would result in a building setback that is offset from the adjacent buildings.
- e. This request is not a willful violation of the Zoning Ordinance, but rather a logical design response to the existing setbacks of the neighboring properties. Site work has not begun; and the need for the variance was

identified during the design phase of this development and during the staff's review of the associated final development plan, recently approved by the Planning Commission.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed and the drive-through facility shall be established in accordance with the submitted application and site plan, or as amended by the Planning Commission on a final development plan.
 2. All necessary permits, including a Zoning Compliance Permit, Demolition and Building Permit(s), shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
2. **CV-2016-27: CHRISTIAN STUDENT FELLOWSHIP, INC.** – requests a conditional use permit to establish a church and associated parking, and variances as follows: (a) to increase the maximum allowable height from 35 feet to 66 feet; (b) a front yard and side street side yard variance for 600 Woodland Avenue and 502-504 Columbia Avenue from 30 feet to 15 feet; (c) a rear yard variance for 502-504 Columbia Avenue from 30 feet to 7 feet; (d) to reduce the required front yard at 507-537 Columbia Avenue from 30 feet to 15 feet; and (e) to reduce the required off-street parking from 160 to 88 parking spaces in a Two Family Residential (R-2) zone, within the Infill and Redevelopment Area, at 600 Woodland Avenue and 502-504 and 507-537 Columbia Avenue (Council District 3).

The Staff Recommends: **Approval** of the requested Conditional Use, for the following reasons:

- a. Granting the requested conditional use for a church should not adversely affect the subject or surrounding properties. This church has existed at this location for 50 years; and the recent construction and re-investment by the University of Kentucky on this end of campus, in conjunction with the ability to purchase the 5 lots on Columbia Avenue to provide parking for the church, presents the applicant with a unique opportunity to expand their ministry at this location. Parking will be adequately addressed, both on site and through the use of available parking on the University of Kentucky campus during the off-peak periods. The primary hours of operation of this church are expected to peak during the hours that most of the nearby university uses are closed (except for the library).
- b. All necessary public facilities and services are available and adequate for the proposed church.

The Staff Recommends: **Approval** of the requested variances, for the following reasons:

- a. Granting the requested variances will not adversely affect the subject or surrounding properties. It will not affect the public health, safety, or welfare, nor will it alter the character of the vicinity. It will not cause a nuisance to the public, since most other properties in this area have a similar sizing and massing. The parking and other dimensional variances are appropriate at this location for the reasons listed in the staff report.
- b. Granting these variances will not allow an unreasonable circumvention of the Zoning Ordinance but will allow an appropriate use and development pattern at the edge of the University of Kentucky campus.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as the plans for renovation would have to be greatly reduced, especially if the variances related to parking are not granted. A less intense development of this site will result in a development that is not in character with the surrounding land uses and development pattern, particularly the nearby University buildings.
- d. There are several unique circumstances that justify each of the individual variances as detailed in the staff report. Furthermore, overall, the variances work together to allow a building and an appropriate parking area that will be in character with the proposed, new, and other existing structures on the surrounding properties.
- e. The variance is not a result of the applicant's actions, as construction has not begun, and the applicant is in the planning phase of the proposed development. The requested variances are a logical response to the proposed design for this site, considering the unique surroundings of this church.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing minor adjustments to the site plan and architecture of the building, as approved by the Division of Planning during the normal permitting process. The Division of Planning will have the right to refer any changes to the Board should there be any question about the final design of the building and the approved site plan.
 2. All applicable permits, including a Zoning Compliance Permit and Building Permit, shall be obtained by the applicant from the Divisions of Planning and Building Inspection, prior to construction of either the church or the parking lot. A certificate of Occupancy is also required prior to the occupancy of the church.
 3. The parking area will be designed to meet the requirements of the Engineering Manuals and will be landscaped with a combination of fencing and landscaping equivalent to the landscape and buffer proposed on the associated site plan.
 4. All exterior lighting shall be directed away from any adjoining residential property.
3. **C-2016-14: CLAYS MILL BAPTIST CHURCH** – requests a conditional use permit to construct a new sanctuary and add to the existing parking in a Single Family Residential (R-1B) zone, at 3000 Clays Mill Road and 509 & 513 Andrea Drive (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use for a church, including the improvements proposed on 3000 Clays Mill Road, and with proper restrictions regarding the timing and construction of the parking area on 509 and 513 Andrea Drive, should mitigate the potential for a negative effect of the expansion of the church into the residential character of the subject and surrounding properties on Andrea Drive. The main sanctuary expansion and redevelopment of the parking area on the main campus at 3000 Clays Mill Road will increase available parking and decrease total building square footage, while still providing a new sanctuary for the church.
- b. All necessary public facilities and services are available and adequate for the proposed church expansion.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the revised site plan (dated April 27, 2016) and application, with timing restrictions and additional screening for the parking area on 509 & 513 Andrea Drive, as listed below.
2. All applicable permits, including a Land Disturbance Permit, Zoning Compliance Permit, Demolition Permit, Building Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Planning, Building Inspection and Engineering, prior to demolition and/or construction, or utilization of 509 & 513 Andrea Drive properties, as appropriate.
3. The 44-space "overflow" parking area may only be constructed after all of the following conditions have been met:
 - a. all of the available 360 parking spaces on 3000 Clays Mill Road have been constructed as per the revised site plan (4/27/16);
 - b. the residences at 509 & 513 Andrea Drive are utilized as staff offices, parsonage(s), or for Sunday School;
 - c. the properties of 509 & 513 Andrea Drive have been consolidated (via plat) to 3000 Clays Mill Road; to ensure that these spaces will remain as accessory to the church;
 - d. the church has reduced the bus fleet parking at this location by 22 buses, with a maximum of 3 church buses regularly parked and stored on the campus; and
 - e. that the vehicular use area screening shall be enhanced with an additional 6' tall fence, wall, or hedge where adjacent to another residential property under different ownership.
4. **C-2016-22: TONY L. SHEETS, DVM** – requests a conditional use permit to establish a veterinary clinic/small animal hospital in a Neighborhood Business (B-1) zone, at 3090 Helmsdale Place, Ste. 220 (Council District 6).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed veterinary clinic will be indoors within a soundproofed office, and will be conducted without overnight boarding of animals. Adequate parking is available, and the location of this suite should further prevent any potential for this use to be a nuisance to the nearby neighborhood.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The use shall be conducted in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be issued by the Divisions of Planning and Building Inspection prior to the operation of this use.
5. **C-2016-23: SHARON SPOTTS** – requests a conditional use permit for a home occupation (creating natural skin care products) in a Single Family Residential (R-1C) zone, at 4712 Matthew Court (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Adequate parking will be provided for this use, should it be needed; and no significant increase in neighborhood traffic is expected. The activity does not involve the use of noisy or harmful equipment of any kind, so the potential of disturbing other property owners is minimal.
- b. All necessary public facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. This home occupation shall be established in accordance with the submitted application and site plan, and operated by the appellant within the residence.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to operating this home occupation.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to

- home occupations.
4. The conditional use permit shall become null and void should the appellant cease to either own or reside at the subject property.
 6. **C-2016-24: ST. JOSEPH HOSPITAL** – requests a conditional use permit to construct a helistop in a Professional Office (P-1) zone, at 150 N. Eagle Creek Drive (Council District 7).

The Staff Recommends: **Approval**, for the following reasons:

- a. Allowing operation of this helistop should not adversely affect the subject or surrounding properties, and will actually enhance the community services that this hospital provides. Wind and noise disturbances to surrounding properties are not expected due to the distance between the proposed helistop landing pad and other uses.
- b. The proposed helistop should not cause a safety problem. The landing destination does not have any overhead utilities, nearby buildings or trees, and is a safe distance from Richmond Road.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted application and site plan, allowing minor modifications (movement in placement or design up to 50 feet) if required by the FAA; otherwise, this application will be subject to further review by the Board.
 2. A note shall be placed on the development plan for this property, referencing the Board's action.
 3. Fueling, maintenance or repair (other than for emergencies) shall not be routinely performed at this location without approval by the Board for a heliport.
7. **C-2016-25: CHRISTIAN ACADEMY OF THE BLUEGRASS** – requests a conditional use permit to establish a school for academic instruction in a Single Family Residential (R-1C) and a Townhouse Residential (R-1T) zone, at 549 Parkside Drive (Council District 6).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site can easily accommodate the proposed enrollment for a school for academic instruction, and the accessory off-street parking and playground uses associated with the school. Parking is plentiful and adequate at this location, and that has not proven to be a problem to the immediate neighborhood in the past. The property has about four times the required parking on their site. The subject site is well screened and buffered from the surrounding neighborhood by trees on two sides and a public elementary school on the third.
- b. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process.
2. All applicable permits, including Building Permits, Remodeling Permits, Fence Permit(s), Zoning Compliance Permits, and Certificates of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
3. Design of the existing parking lot, including any drop-off and pick-up locations involving vehicle circulation, will be subject to review & approval by the Division of Traffic Engineering.
4. The use of the property as a school shall be subject to review and approval of the Division of Water Quality through the Capacity Assurance Program.
5. The existing trees and shrub screening located on the eastern and southern property lines shall be maintained, although individual trees and shrubs may be removed in this area if it is determined that they are diseased or damaged by past weather conditions.

E. **Administrative Reviews**

None

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

- A. **Landscape Review Committee** - The term of Mr. Rory Kahly, Tree Board member of the Landscape Review Committee, has ended due to the expiration of his term on the Tree Board. A new member needs to be appointed to replace Mr. Kahly, and Ms. Anne Bowe has agreed to serve in that capacity. Names and terms of current Landscape

Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2019	Ms. Anne Bowe	Tree Board
11/30/2016	Mr. Mike Cravens	Lexington Homebuilders
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be June 24, 2016.

VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.